

This letter responds to a request for the Department to review information contained in a tax publication. See 86 Ill. Adm. Code 130. (This is a GIL).

August 11, 2004

Dear Xxxxx:

This letter is in response to your request dated June 16, 2004, forwarded to our office for review of the manuscript for the ABC. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry. The nature of your inquiry and the information you have provided require that we respond with a GIL. In your request you have stated and made inquiry as follows:

This is the manuscript for the Illinois chapter in our 2004 workbook. I appreciate your willingness to review this chapter. I have left a blank page so I can insert a form for Example 20. I have not been able to find the blank yet. If you have a copy I would appreciate having it.

If there are other topics, you would like us to discuss with our participants, we can do so. Just let me know what they are. We will hit approximately 6,000 Illinois tax preparers.

## **DEPARTMENT'S RESPONSE**

The following suggestions are reflective of the Department's regulations and publications. The Department cannot approve publications other than those issued by the Department of Revenue. We have carefully reviewed your manuscript. Unfortunately, due to time limitations and constraints on Department personnel, we are unable to review and revise the manuscript on a word for word basis, and therefore are unable to address each individual statement. However, we have tried to offer the following suggestions in areas of significant importance. Citations have been provided for your convenience. Tax issues involve many complex matters, we suggest you advise your participants to carefully review the appropriate statutes, Department regulations and informational letters for direction when making a determination of tax liability.

Please note in the section entitled "Exempt Sales" (page 4) that the exempt organization must have an "E" number issued by the Department before the organization can make tax exempt purchases. See 86 Ill. Adm. Code 130.2007.

Under the "Use Tax" section (page 5) it should be noted that persons who purchase tangible personal property from out-of-State retailers, and either ship or bring that property into Illinois would incur Use Tax Liability. The purchaser must self assess the tax and remit it directly to the Department of Revenue. The purchaser would get credit against his or her Illinois Use Tax obligations for taxes properly due and paid in another state. See 86 Ill. Adm. Code 150.701 and 150.310(a)(3).

Please note that in gift situations, (page 6), the "donor" is considered the end-user of the tangible personal property, not the "donee." See 86 Ill. Adm. Code 150.305(c). Therefore, the donor is responsible for the Use Tax. The donee does not incur any Use Tax liability.

On page 7, under the "Nonresident Exemption" section, the Use Tax does not apply to tangible personal property used in Illinois by a nonresident individual, with the caveat that the property was used outside Illinois for at least 3 months before being brought into this State. See 86 Ill. Adm. Code 150.315(a). Please note the additional statutory language (Section 3-70 of the Use Tax Act) that excludes titled items, such as motor vehicles, from this 3 month rule. Please note that the nonresident exemption applies only to individuals, not businesses.

Please refer to the Service Occupation Tax section regarding sales of service in Illinois. 86 Ill. Adm. Code 140. We recommend the section be changed to reflect that a serviceman may start with the selling price to calculate his or her tax liability, however, that is not always the case. Please see general information letter ST-03-0068 for possible ways a serviceman may calculate his or her tax liability. It is noted that a serviceman may incur Service Occupation Tax or Use Tax (not "SUT"), depending on which tax base the serviceman chooses. These informational letters may be found on the Department's website.

We recommend the Service Occupation Tax sections on page 9 reflect that the serviceman may pay Use Tax on his cost price if he is not otherwise required to be registered under the Retailers' Occupation Tax Act. If he is otherwise required to be registered, but still meets the ratio, he can pay Service Occupation Tax on his cost price. For multi-service situations, please refer to 86 Ill. Adm. Code 140.145, and more specifically, the certification requirements of the secondary serviceman. The primary serviceman does not incur Use Tax, if the secondary serviceman certifies in writing to the primary serviceman that he has paid the Use Tax.

For maintenance agreements and extended warranties, please note that the person providing the repairs will generally incur a Use Tax liability on the repair parts. The customer incurs no Use Tax liability in those situations. See 86 Ill. Adm. Code 140.301(b)(3).

Please note, various local governments may assess local occupation taxes. It is important to note that it is not where the customer lives that determines the tax rate, it is determined by where the retailer makes the sale. Please see 86 Ill. Adm. Code 270.115.

The regulations regarding shipping and handling may be found at 86 Ill. Adm. Code 130.410. In addition, please refer to general information letter ST-03-0018.

In addition, we would note that only Private Letter Rulings are binding on the Department. General Information letters are intended to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired.

The UPIA has undergone various changes, most notably is the fact that beginning January 1, 2004, any liability is assessed late pay penalty (based on tiers) with no 30 day grace period. Please refer to the Uniform Penalty and Interest Act for updates on the percentages for late payment or nonpayment of tax liability. See Section 3-3(B)(2) of the Act as amended by Public Act 92-742.

Please note that the frivolous return penalty information in your manual is not applicable to Retailers' Occupation Tax nor Service Occupation Tax liabilities.

We are unable to provide you with a copy of the ST-1 form for example 20. The ST-1 forms are preprinted with specific tax payer information, including individual business tax numbers and rates.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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